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SENATE BILL 28

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

AN ACT

**RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE
BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY; PROHIBITING
QUOTAS BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 28-1-2 NMSA 1978 (being Laws 1969,
Chapter 196, Section 2, as amended) is amended to read:**

"28-1-2. DEFINITIONS. --As used in the Human Rights Act:

**A. "person" means one or more individuals, a
partnership, association, organization, corporation, joint
venture, legal representative, trustees, receivers or the state
and all of its political subdivisions;**

**B. "employer" means any person employing four or
more persons and any person acting for an employer;**

C. "commission" means the human rights commission;

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1 D. "director" means the director of the human
2 rights division of the labor department;

3 E. "employee" means any person in the employ of an
4 employer or an applicant for employment;

5 F. "labor organization" means any organization
6 [~~which~~] that exists for the purpose in whole or in part of
7 collective bargaining or of dealing with employers concerning
8 grievances, terms or conditions of employment or of other
9 mutual aid or protection in connection with employment;

10 G. "employment agency" means any person regularly
11 undertaking with or without compensation to procure
12 opportunities to work or to procure, recruit or refer
13 employees;

14 H. "public accommodation" means any establishment
15 that provides or offers its services, facilities,
16 accommodations or goods to the public, but does not include a
17 bona fide private club or other place or establishment [~~which~~]
18 that is by its nature and use distinctly private;

19 I. "housing accommodation" means any building or
20 portion of a building [~~which~~] that is constructed or to be
21 constructed, which is used or intended for use as the residence
22 or sleeping place of any individual;

23 J. "real property" means lands, leaseholds or
24 commercial or industrial buildings, whether constructed or to
25 be constructed, offered for sale or rent, and any land rented

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1 or leased for the use, parking or storage of house trailers;

2 K. "secretary" means the secretary of labor;

3 L. "unlawful discriminatory practices" means those
4 unlawful practices and acts specified in Section 28-1-7 NMSA
5 1978;

6 M. "physical or mental handicap" means a physical
7 or mental impairment that substantially limits one or more of
8 ~~[an individual's]~~ a person's major life activities. ~~[An~~
9 ~~individual]~~ A person is also considered to be physically or
10 mentally handicapped if he has a record of a physical or mental
11 handicap or is regarded as having a physical or mental
12 handicap;

13 N. "major life activities" means functions such as
14 caring for one's self, performing manual tasks, walking,
15 seeing, hearing, speaking, breathing, learning and working;
16 ~~[and]~~

17 O. "applicant for employment" means a person
18 applying for a position as an employee;

19 P. "sexual orientation" means heterosexuality,
20 homosexuality or bisexuality, whether actual or perceived; and

21 Q. "gender identity" means a person's self-
22 perception, or perception of that person by another, of the
23 person's identity as a male or female based upon the person's
24 appearance, behavior or physical characteristics that are in
25 accord with or opposed to the person's physical anatomy.

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1 chromosomal sex or sex at birth."

2 Section 2. Section 28-1-7 NMSA 1978 (being Laws 1969,
3 Chapter 196, Section 7, as amended) is amended to read:

4 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE. --It is an
5 unlawful discriminatory practice for:

6 A. an employer, unless based on a bona fide
7 occupational qualification or other statutory prohibition, to
8 refuse to hire, to discharge, to promote or demote or to
9 discriminate in matters of compensation, terms, conditions or
10 privileges of employment against any person otherwise qualified
11 because of race, age, religion, color, national origin,
12 ancestry, sex, sexual orientation, gender identity, physical or
13 mental handicap or serious medical condition, or, if the
14 employer has fifty or more employees, spousal affiliation;
15 provided, however, that 29 U.S.C. Section 631(c)(1) and (2)
16 shall apply to discrimination based on age;

17 B. a labor organization to exclude [~~an individual~~]
18 a person or to expel or otherwise discriminate against any of
19 its members or against any employer or employee because of
20 race, religion, color, national origin, ancestry, sex, sexual
21 orientation, gender identity, spousal affiliation, physical or
22 mental handicap or serious medical condition;

23 C. any employer, labor organization or joint
24 apprenticeship committee to refuse to admit or employ any
25 [~~individual~~] person in any program established to provide an

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1 apprenticeship or other training or retraining because of race,
2 religion, color, national origin, ancestry, sex, sexual
3 orientation, gender identity, physical or mental handicap or
4 serious medical condition, or, if the employer has fifty or more
5 employees, spousal affiliation;

6 D. any person, employer, employment agency or labor
7 organization to print or circulate or cause to be printed or
8 circulated any statement, advertisement or publication, to use
9 any form of application for employment or membership or to make
10 any inquiry regarding prospective membership or employment that
11 expresses, directly or indirectly, any limitation, specification
12 or discrimination as to race, color, religion, national origin,
13 ancestry, sex, sexual orientation, gender identity, physical or
14 mental handicap or serious medical condition, or, if the
15 employer has fifty or more employees, spousal affiliation,
16 unless based on a bona fide occupational qualification;

17 E. an employment agency to refuse to list and
18 properly classify for employment or refer [~~an individual~~] a
19 person for employment in a known available job, for which the
20 [~~individual~~] person is otherwise qualified, because of race,
21 religion, color, national origin, ancestry, sex, sexual
22 orientation, gender identity, spousal affiliation, physical or
23 mental handicap or serious medical condition, unless based on a
24 bona fide occupational qualification, or to comply with a
25 request from an employer for referral of applicants for

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1 employment if the request indicates either directly or
2 indirectly that the employer discriminates in employment on the
3 basis of race, religion, color, national origin, ancestry, sex,
4 sexual orientation, gender identity, spousal affiliation,
5 physical or mental handicap or serious medical condition, unless
6 based on a bona fide occupational qualification;

7 F. any person in any public accommodation to make a
8 distinction, directly or indirectly, in offering or refusing to
9 offer its services, facilities, accommodations or goods to any
10 [~~individual~~] person because of race, religion, color, national
11 origin, ancestry, sex, sexual orientation, gender identity,
12 spousal affiliation or physical or mental handicap, provided
13 that the physical or mental handicap is unrelated to [~~an~~
14 ~~individual's~~] a person's ability to acquire or rent and maintain
15 particular real property or housing accommodation;

16 G. any person to:

17 (1) refuse to sell, rent, assign, lease or
18 sublease or offer for sale, rental, lease, assignment or
19 sublease any housing accommodation or real property to any
20 [~~individual~~] person or to refuse to negotiate for the sale,
21 rental, lease, assignment or sublease of any housing
22 accommodation or real property to any [~~individual~~] person
23 because of race, religion, color, national origin, ancestry,
24 sex, sexual orientation, gender identity, spousal affiliation or
25 physical or mental handicap, provided that the physical or

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1 mental handicap is unrelated to [~~an individual's~~] a person's
2 ability to acquire or rent and maintain particular real property
3 or housing accommodation;

4 (2) discriminate against any [~~individual~~]
5 person in the terms, conditions or privileges of the sale,
6 rental, assignment, lease or sublease of any housing
7 accommodation or real property or in the provision of facilities
8 or services in connection therewith because of [~~the~~] race,
9 religion, color, national origin, ancestry, sex, sexual
10 orientation, gender identity, spousal affiliation or physical or
11 mental handicap, provided that the physical or mental handicap
12 is unrelated to [~~an individual's~~] a person's ability to acquire
13 or rent and maintain particular real property or housing
14 accommodation; or

15 (3) print, circulate, display or mail or cause
16 to be printed, circulated, displayed or mailed any statement,
17 advertisement, publication or sign or use any form of
18 application for the purchase, rental, lease, assignment or
19 sublease of any housing accommodation or real property or to
20 make any record or inquiry regarding the prospective purchase,
21 rental, lease, assignment or sublease of any housing
22 accommodation or real property that expresses any preference,
23 limitation or discrimination as to race, religion, color,
24 national origin, ancestry, sex, sexual orientation, gender
25 identity, spousal affiliation or physical or mental handicap,

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1 provided that the physical or mental handicap is unrelated to
2 [~~an individual's~~] a person's ability to acquire or rent and
3 maintain particular real property or housing accommodation;

4 H. any person to whom application is made either for
5 financial assistance for the acquisition, construction,
6 rehabilitation, repair or maintenance of any housing
7 accommodation or real property or for any type of consumer
8 credit, including financial assistance for the acquisition of
9 any consumer good as defined by Section [~~55-9-109~~] 55-9-102 NMSA
10 1978, to:

11 (1) consider the race, religion, color,
12 national origin, ancestry, sex, sexual orientation, gender
13 identity, spousal affiliation or physical or mental handicap of
14 any individual in the granting, withholding, extending,
15 modifying or renewing or in the fixing of the rates, terms,
16 conditions or provisions of any financial assistance or in the
17 extension of services in connection with the request for
18 financial assistance; or

19 (2) use any form of application for financial
20 assistance or to make any record or inquiry in connection with
21 applications for financial assistance that expresses, directly
22 or indirectly, any limitation, specification or discrimination
23 as to race, religion, color, national origin, ancestry, sex,
24 sexual orientation, gender identity, spousal affiliation or
25 physical or mental handicap;

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1 I. any person or employer to:

2 (1) aid, abet, incite, compel or coerce the
3 doing of any unlawful discriminatory practice or to attempt to
4 do so;

5 (2) engage in any form of threats, reprisal or
6 discrimination against any person who has opposed any unlawful
7 discriminatory practice or has filed a complaint, testified or
8 participated in any proceeding under the Human Rights Act; or

9 (3) willfully obstruct or prevent any person
10 from complying with the provisions of the Human Rights Act or to
11 resist, prevent, impede or interfere with the commission or any
12 of its members, staff or representatives in the performance of
13 their duties under the Human Rights Act; or

14 J. any employer to refuse or fail to accommodate [~~to~~
15 ~~an individual's~~] a person's physical or mental handicap or
16 serious medical condition, unless such accommodation is
17 unreasonable or an undue hardship. "

18 Section 3. A new section of the Human Rights Act is
19 enacted to read:

20 "[NEW MATERIAL] QUOTAS PROHIBITED. --A person, employer,
21 employment agency or organization shall not use the provisions
22 of the Human Rights Act to adopt or implement a quota on the
23 basis of sexual orientation or gender identity. "

24 Section 4. Section 28-1-9 NMSA 1978 (being Laws 1969,
25 Chapter 196, Section 8, as amended) is amended to read:

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1 "28-1-9. EXEMPTIONS. -- Nothing contained in the Human
2 Rights Act shall:

3 A. apply to any single-family dwelling sold, leased,
4 subleased or rented by an owner without the making of any
5 notice, statement or advertisement with respect to the sale,
6 lease, sublease or rental of a dwelling unit that indicates any
7 preference, limitation or discrimination based on race, color,
8 religion, national origin, ancestry, [~~or~~] sex, sexual
9 orientation or gender identity. This exemption is subject to
10 these further reservations:

11 (1) to qualify for the exemption, the seller
12 must not be an owner of or own or have reserved any interest in
13 more than three single-family dwellings; and

14 (2) if the seller [~~doesn't presently~~] does not
15 currently live in the dwelling or he was not the most recent
16 occupant, [~~then~~] the exemption granted in this section [~~will~~]
17 shall only apply to one sale in twenty-four months;

18 B. bar any religious or denominational institution
19 or organization [~~which~~] that is operated, [~~or~~] supervised or
20 controlled by or that is operated in connection with a religious
21 or denominational organization from limiting admission to or
22 giving preference to persons of the same religion or
23 denomination or from making selections of buyers, lessees or
24 tenants as are calculated by the organization or denomination to
25 promote the religious or denominational principles for which it

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1 is established or maintained, unless membership in the religious
2 or denominational organization is restricted on account of race,
3 color, national origin or ancestry;

4 C. bar any religious or denominational institution
5 or organization that is operated, supervised or controlled by or
6 that is operated in connection with a religious or
7 denominational organization from imposing discriminatory
8 employment or renting practices that are based upon sexual
9 orientation or gender identity; provided, that the provisions of
10 the Human Rights Act with respect to sexual orientation and
11 gender identity shall apply to any other:

12 (1) for-profit activities of a religious or
13 denominational institution or religious organization subject to
14 the provisions of Section 511(a) of the Internal Revenue Code of
15 1986, as amended; or

16 (2) nonprofit activities of a religious or
17 denominational institution or religious organization subject to
18 the provisions of Section 501(c)(3) of the Internal Revenue Code
19 of 1986, as amended;

20 [~~C.-~~] D. apply to rooms or units in dwellings
21 containing living quarters occupied or intended to be occupied
22 by no more than four families living independently of each
23 other, if the owner actually maintains and occupies one of the
24 living quarters as his residence;

25 [~~D.-~~] E. apply to public restrooms, public showers,

1 public dressing facilities or sleeping quarters in public
2 institutions, where the preference or limitation is based on
3 sex; and

4 [E-] F. prevent the mandatory retirement of an
5 employee upon reaching the age of sixty-five years or older, if
6 the employer is operating under a retirement plan [~~which~~] that
7 meets the requirements of Public Law 93-406, the Employee
8 Retirement Income Security Act of 1974. "

9 Section 5. EFFECTIVE DATE. -- The effective date of the
10 provisions of this act is July 1, 2003.

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